

# Jurisprudential and legal support in Cases of Unusual and Unauthorized Sexual Behaviors in Domestic Sexual Violence in Iran: A Review Article

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ARTICLE INFO	ABSTRACT
<p><i>Article type:</i> Original article</p>	<p><b>Background &amp; aim:</b> Inadequate laws to prevent sexual violence against women and to protect victims as well as the factors such as patriarchal culture, and misconceptions of some religious and Islamic teachings can lead to temper divorce and betrayal. This study was performed to review the jurisprudential and legal protections for domestic sexual violence in Iran.</p> <p><b>Methods:</b> In this review, the published evidence on the supportive aspects of domestic sexual violence between 1990 and 2021 was searched in the English database of Scopus, PubMed, Science Direct, and EBSCO as well as Persian databases of Magiran, SID, and IranMedex. To collect data, searching was done using the key words of Violence, Domestic, Family Violence, Sex Offenses, Partner Abuse, Sexual Violence, Civil Law, legislation, jurisprudence and religion of Islam alone or in combination in English and their Persian equivalents.</p> <p><b>Results:</b> Among 69 studies related to the legal and religious aspects of sexual violence, 35 studies were reviewed. In Iranian law, there is legal material only in a number of cases of sexual violence in the section on punishments and the Islamic Penal Code. There is also disagreement among Shiite scholars about some unusual sexual behaviors. Ongoing counseling is emphasized due to the importance of different dimensions such as unconventional sexual request, and sexual violence with reluctance of wife.</p> <p><b>Conclusion:</b> Some cases of sexual violence are not properly restricted. Therefore, more attention to these cases by jurists and legislators can reduce the occurrence of many forms of sexual violence against women.</p>
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## Introduction

One of the natural and common instincts among human beings is the sexual instinct, which also has a lot of strength, while the ways to deal with it are almost as diverse as the number of existing cultures. In the Islamic view, special attention has been paid to sexual instinct emphasizing the importance of forming a family for upbringing of a righteous person and building a dynamic and healthy society, which is controlled by sexual instinct (1). In Iranian law, according to Imami jurisprudence, there are specific rules for marriage and sexual instinct (2). Research shows that sexual dysfunction is closely related to social problems such as crime, rape, mental illness, and divorce. Couples may

have sexual dysfunction and be unaware of its impact on marital problems and its role in poor communication, low self-esteem and depression for themselves and their spouse. According to research, 50-60% of divorces are rooted in sexual issues (3). Sexual dysfunction is observed in all societies that affects the quality of married people's sexual relationships (4). Domestic violence and abuse (DVA) is one of the issues which is effective on women's psychological functioning, which can cause mental and physical illnesses (5). Domestic violence can affect the quality of life in women at any time. Violence against women is a phenomenon that due to their gender, women are subjected to

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coercion and abuse of rights by the opposite sex. If this happens within the family and between the couple is referred to as intimate partner violence (IPV). Domestic violence is defined as any violent behavior in an intimate relationship that results in physical abuse, sexual coercion, psychological abuse, and behavior control (6). Besides, the WHO has stated that sexual violence is "any sexual act, attempting to obtain a sexual act, or other act directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting. It includes rape, defined as the physically forced or otherwise coerced penetration of the vulva or anus with a penis, other body part or object, attempted rape, unwanted sexual touching and other non-contact forms" (7).

Sexual harassment includes "any physical, visual, verbal or sexual act which a woman or girl feels threatened, intimidated or attacked, resulting in psychological distress or humiliation" (8). In other words, sexual harassment is unwanted sexual attention and has various behavioral forms through the eyes (gazing), verbal (jokes, questions or comments with a sexual theme), unwanted pressure to make an appointment, unwanted touch, unwanted pressure to agree to have sex, etc. (9); when this violence is perpetrated by the husband, it is called domestic sexual violence. Verbal sexual violence includes telling sexual stories, sexual ironies in speech, nasty taunts, non-verbal sexual jokes, showing inappropriate sexual images, persuading the wife to have sexual intercourse, sexual relationship with threats, coercion, force and violence, forcing the wife to engage in unusual forms of sexual intercourse (anal intercourse), having sexual intercourse at inappropriate times (during menstruation, or sick, etc). (10); forcing to have unusual sexual acts, and not having sexual relationship at all, etc. (11). The lifetime prevalence of physical violence and intimate partner violence (IPV), or both, for women in the world, ranges from 15% to 71% (12). Qualitative research on IPV survivors highlighted the impact of sexual abuse on mental health problems (13). Studies that have examined the relationship between the severity of IPV and mental and physical problems

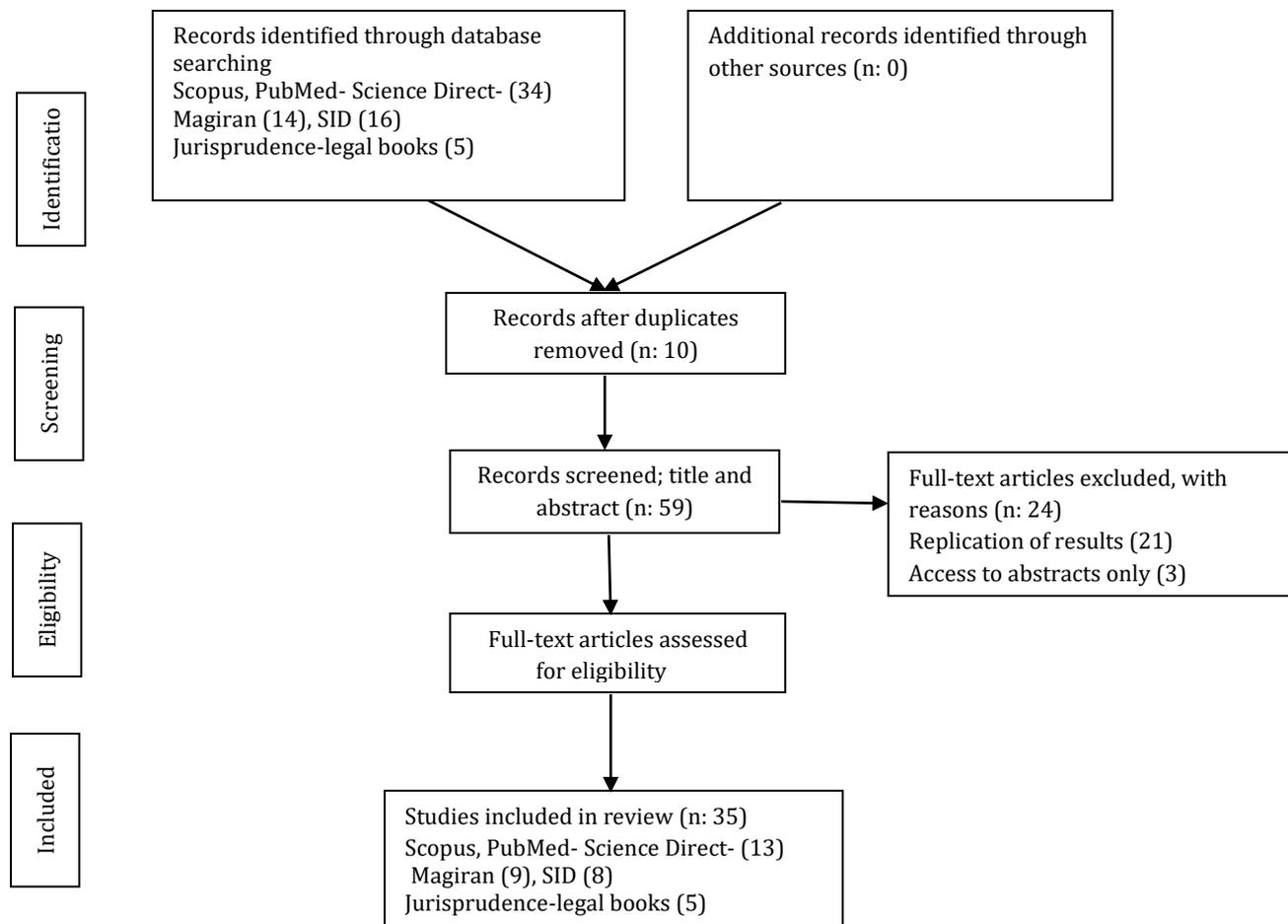
reported a positive correlation (14-16). Women who have recently experienced severe episodes of sexual violence experienced higher levels of depression, anxiety, and especially PTSD than the general public (14, 17-20). The WHO report on violence against women in 2018, based on an analysis of data from 2000-2018 in 161 countries, showed that approximately 1 in 3 or 30% of women worldwide have been raped in the form of physical and / or sexual violence by an intimate partner or non-partner or both (21). The study performed in Iran categorized seven types of violence against women: psychological, sexual, physical, emotional, verbal, financial and social violence; the findings showed that emotional, verbal and psychological violence were the most prevalent forms of violence, respectively; sexual, physical and financial violence were moderately prevalent; and social violence was the least prevalent. The total rate of violence against women in Miyaneh was high (81.8%) (22). According to the research conducted in Iran, emotional and psychological violence such as insults, use of obscene words, humiliation, etc. were more common than physical violence, the effects of which, unlike physical violence, do not become apparent quickly. Nevertheless, it has many destructive effects in the long term (22). Derakhshanpour et al. (2014) reported that 92% of the studied women in Bandar Abbas have experienced violence, which was a high rate in this city. They also reported psychological and emotional (54%) violence as the most common type, followed by verbal, physical and sexual violence (23). Moreover, Mohammadi (2012) reported psychological and emotional violence as the most common type of violence against women in Ravansar (24). Therefore, this study was performed aimed to review the jurisprudential and legal protections in cases of unconventional and unauthorized sexual behaviors in domestic sexual violence (husband against wife) in Iran.

## Materials and Methods

In this review study, the published evidence on the supportive aspects of domestic sexual violence between 1990 and 2021 were searched in the Persian databases of Magiran, SID, Iranmedex and the English database of Scopus, PubMed, Science Direct, EBSCO using the keywords of Violence, Domestic ‘Family

Violence, Intimate Partner Violence, Sex Offenses, Spousal Abuse, Partner Abuse, Sexual

Violence, Sexual Abuses, Civil Law, legislation, (Figure 1).



**Figure 1.** Flow diagram of the searching strategy

Inclusion criteria were the articles published in Persian and English on women's reproductive health and sexual violence, the available full text, articles found between 1990 and 2021. Also, due to the wide scope of sexual violence health, this review article only examined the areas of husband-to-wife sexual violence.

Exclusion criteria were the articles that had content outside the article, the articles with unspecified sample size, and the articles with not well defined method; by eliminating duplicate articles, 35 articles with entry conditions were reviewed.

For data collection, at first the articles that had one of the above keywords alone or in combination in the title or text were selected. Based on the inclusion criteria, abstracts of the articles published in Persian and English were reviewed. After removing the articles that did not meet the inclusion criteria, the full text of all articles which met the inclusion criteria was reviewed. Then, their results were extracted according to the investigated factor and provided to one other researcher to review and correct. In general, out of 69 articles, 35 articles were extracted and reviewed.

## Results

In this study, out of 69 articles which were related to the subject at the beginning of the study, 35 articles were extracted based on the inclusion criteria. The right to sexual pleasure is one of the most important rights and obligations of couples in Islam. Couples are free to have sex, but this freedom should not hurt one or both. The negative effects of unconventional sex on a woman (anal intercourse), are undeniable mentally and physically.

Unusual sexual behavior is considered unauthorized action if accompanied by harassment of a woman, or if it incurs hardship or injury on the woman, and finally if the rule of "benevolent conduct" is not observed, or some kinds of pleasure are demanded that the woman has refrained from by setting provisions in the marriage contract. Therefore, the legislator should protect women in these cases and legislate appropriate legal deterrents to prevent violent behavior of men (25).

### **Kinds of anomaly Sexual Relationship between Couples in Jurisprudence and Law**

#### **Oath of Ila**

Religious teachings refer to a special type of sexual violence called "Ila". Ila is an oath whereby the husband vows to refrain from sexual relationship with his wife for at least four months. If he fulfills his oath, the marriage is dissolved; if he breaks it, the marriage continues. The jurists have not discussed the issue of Ila and there is no law in this regard, but the Qur'an mentions Ila in verses 226-227 of Al-Baqarah Surah. (26).

#### **Husband's relationship with other women**

According to the Article 1130 of the Iranian Civil Code, if the husband's sexual infidelity and illicit intercourse with other women is customary, the wife has the right to seek a divorce from the court under a misdemeanor. Also, the final conviction of the husband for illegitimate relationship, which is contrary to the manners and family character of the other party, makes it difficult for the wife to continue living that itself is a cause of rejecting hardship or "Osr-o-Haraj" and allows the wife to divorce because her life becomes hard and difficult.

#### **Unusual sex (anal sex)**

In jurisprudential texts, some sexual violence against the wife, such as requesting anal intercourse or sexual intercourse during menstruation and fasting, has been punished by ta'zir (27). Aside from the medical problems related to this issue and also its religious problems, if the wife can prove that she is in trouble and does not want to do so, it will be a proof for divorce due to hardship. In most cases, the court refers the wife to a forensic pathologist for examination. In addition to feeling uncomfortable for a woman, the feeling of inferiority and just being a tool to satisfy a man's sexual desires, sometimes also has physiological consequences. In any case, if a man continues to do so, the woman can file for divorce by proving such proof (28). Article 1130 of the Civil Code says "If the continuation of the marriage causes hardship to the wife, she can refer to the ruler of Sharia and request a divorce". If the difficulty is proved in court, the court can force the husband to divorce, and if coercion was not possible, the wife will divorce with the permission of the religious judge. Therefore, due to the complications of this relationship, its legality is controversial (25).

#### **Retribution and Diyah (blood money) in sexual injuries (Efza)**

In the Islamic legal system, the right to sexual enjoyment is considered as one of the most important rights of the husband over the wife, and as soon as the marriage takes place, this right belongs to the man. But this right is not a reason for a man to enjoy a woman at any time and in any way he wants. Such relationships should not go beyond normal. The issue mentioned in Iranian civil law is the "Efza" problem

Efza means splitting or tearing the anal and vaginal canals of a woman.

In Tahrir al-Waseela about Efza Imam Khomeini says:

"If this happens to a minor girl, many jurisprudential rulings have been imposed on her, including the eternal prohibition of the marital relationship, the payment of lifelong alimony to the victim, and the necessity of paying Diah (blood money), which is equivalent to the perfect Diah of a human

being" (27). Article 660 of the Islamic Penal Code describes Efza as follows (28):

A. If the wife is an adult and Efza occurs for a reason other than sexual intercourse, the full Diah of the woman must be paid.

B. If the wife is immature and Efza occurs due to sexual intercourse, in addition to all the Mahr and full Diah of the wife, paying alimony is also the responsibility of the husband until the death of one of the spouses, even if he has divorced her (27, 29).

### **Sexual violence with reluctance**

It is the limitation and defeat of a person's will in front of another person or persons due to the threat and fear inflicted on her. The meaning of reluctance and threats in sexual violence is as follows: forcing a wife to have sex at times that she does not want to have sex due to physical or mental fatigue, being in inappropriate time and place, or for any other reason, forcing the wife to have sex by threatening to kill her, threatening to beat her, and so on.

This is one of the examples of sexual violence, in which there is unfortunately no legal deterrent for the man, but in the case of forced sexual intercourse, beatings and injuries occur, or the wife is ultimately murdered, the following criminal solutions can be followed in sexual violence against the wife:

**Retribution:** Article 16 of the Islamic Penal Code approved in 2013 says "Retribution is the main punishment for intentional crimes against the soul, limbs and interests" (28). Article 388 of the Iranian Civil Code says "A crime against a limb is any harm less than murder, such as amputation, injury and damage to interests (for example, sadomasochistic sexual intercourse) or sexual violence leading to amputation of the wife or harm to the interests of the wife, such as eyesight, etc., if the husband deliberately commits these crimes, he will be sentenced to retaliation. Muslim men and women are equal in retaliation, and men are sentenced to retaliation for harming women (28).

**Diah:** According to the Article 448 of the Civil Code of Iran (29), Diah "a certain amount of money that is prescribed in the Holy Shari'ah due to unintentional crime against the soul, limb or benefit, or intentional crime where there is no retribution in any way". Article 450 of the Islamic Penal Code also stipulates that Diah is

used where retribution is not permissible or possible.

The husband should pay Diah if he resorts to beating, pulling the woman's hair, etc. to force the wife to obey, or harms the woman while having sex (cause fractures, injuries, bruises and redness of her body).

Regarding the death of a wife during sexual intercourse, it is narrated from Imam Sadiq (as): A man should pay the full Diya and he should not be retaliated against, because murder was a mistake and unintentional, so there is no retaliation (29, 30).

### **Nushuz Husbands**

Regarding the right to sexual intercourse, the husband is obliged to have intercourse with his wife every four months. There is no official law regarding the impotence of men and the sexual needs of women, but jurisprudence deal with it, claiming that the satisfaction of sexual needs is obligatory for both men and women in the family. Meeting these needs strengthens marital ties, creates peace, and prevents extramarital sexual relationships. The husband has no right to refuse intercourse without any reason, even if the woman is not harmed from this perspective.

### **Discussion**

The present review study was conducted aimed to provide an overview of the studies and jurisprudential and legal perspectives on the necessary support in cases of unconventional and unauthorized sexual behavior in the field of domestic sexual violence (husband to wife) in Iran. In general, the legal and jurisprudential provisions of domestic sexual violence, despite the rejection of any violence in the jurisprudential perspective, indicate shortcomings in the field of legislation and family counseling in this area. It should be noted that some jurists disagree on some aspects of sexual violence based on jurisprudential citations. If sexual intercourse is not convincing, it leads to feelings of deprivation, failure and endangerment of mental health, and causes communication problems and violence between spouses (31-33). In addition to the individual role, the family needs to consider the role of community structure and legislation in sexual violence.

The results showed that the legal solution to deal with the verbal sexual violence of Ella against the wife after four months is that the husband has to ignore his oath by giving atonement and have sex regarding to the right. He should consent to divorce if he insists on his behavior, so that the woman can get out of confusion, tension and anxiety. Islamic laws say that a wife should be divorced by her husband or forcibly divorced by a religious ruler, which is called "obligatory divorce" (26).

Although this oath may not be the case today, but according to Makarem Shirazi, one of the contemporary commentators, Islam has not invalidated the rule of Ila in general, but has eliminated its negative effects, because Islamic laws and legal regulations do not allow a woman to be confused by her husband., and the four-month period as a deadline indicates that sexual intercourse is required as a religious obligation every four months, but it should be lessened if the period is too long and leads to sin (34). If a woman is kept in an undetermined condition and she suffer both mentally and physically, so the "harmless rule" dictates that she should be freed from this condition. Another factor which strengthens the foundations of the family and regulates the relationship between family members in the framework of morality and justice is "benevolent conduct". According to the Qur'an, the most basic principle in the interaction between couples is benevolent conduct, which has been emphasized in verse 19 of Nisa surah (35). Thirty-nine verses in the Qur'an repeated the word "benevolent" which is a symbol of the couple's relationship in the family. Failure to pay attention to this rule can cause problems in life and disrupt the couple's relationship. Examples of this rule in the legal system include providing alimony for the wife, having good morals in life, observing the wife's rights in life, and even after divorce. Observing this rule by men and women in life is explicitly commanded in the Qur'an (36).

The principle of rejecting hardship or "Osr-o-Haraj" in Islam is also one of the important legal-jurisprudential rules which can be cited in various dimensions.

Failure to satisfy the sexual needs of the wife by husband, if causes hardship (Haraj), allows the wife to turn to the Islamic ruler to oblige

husband to have sex with her or divorce her (37).

Another violence against women is the husband's illicit affair with other women, in such situation, the wife can ask for compensation for material and moral damages and Haraji divorce.

It is noteworthy that illegitimate relationship according to the society is abuse and mistreatment of the wife and is one of the crimes that are contrary to the family status and dignity of women.

According to the Islamic Penal Code, punishment of 1 to 99 lashes are considered for a married man who has extramarital sexual relationship less than Zina (zina is an Islamic legal term referring to unlawful sexual intercourse) (28). In general, illegitimate sexual intercourse between a man and a woman is called zina. Adultery refers to the sexual relationship between a man and a woman without a permanent or temporary marriage contract, leading to penetration (vagina or contract), while either of them is married and has a permanent spouse with whom they can have intimacy and sexual relationship, but they still commit Zine.

To prove that a man has committed adultery, he must either confess to adultery four times, or four righteous men, or three men and two women, testify that he committed adultery. On the other hand, in Islamic jurisprudence and Iranian law, polygamy is not forbidden for a man. However, the law has limited it to prevent men from abusing this authority. In fact, according to the law, a man cannot have another wife while having a wife, except in the following cases:

- First wife's satisfaction
- Lack of power of the first wife to perform marital duties
- Disobedience of the first wife to husband (not having sex)
- First wife has psychosis or incurable diseases
- First wife is sentenced to 5 years or more in prison
- The woman leaving family life
- Female infertility
- Absence of the first wife

Of course, for remarriage, the permission of the court is still required even if the above conditions exist. Remarriage of a man gives a woman the right to apply to the court for a certificate of impossibility of reconciliation (38, 39).

Another issue that is being discussed is requesting anal sex. Of course, some jurists have ruled on the permission of this relationship (reluctantly) based on verse 223 of Surah Al-Baqarah (40, 41) and this issue has been discussed in detail in jurisprudential and fundamentalist books (37, 42). Some jurists have issued fatwas on the prohibition of this unconventional sexual intercourse according to the verse 223 of Surah Al-Baqarah (43, 44). It has been emphasized in some narrations (55).

If the husband insists on anal sex, the wife can refuse it based on the Article 1108 of the Civil Code. Also, due to not having "benevolent conduct" caused by this action, and according to the Article 1103, she can ask the court to ask the man to leave the act; or to file for divorce based on the principle of rejecting hardship or "Osr-o-Haraj" in Islamic jurisprudence contained in the Article 1130 of the law and other provisions set in the marriage contract (56).

Another type of violence is "Efza". There is no independent title assigned to sexual violence against the wife in Iranian law. The "Efza" problem is mentioned only in the Article 13 of the Islamic Penal Code of 2013 regarding Diyah (28), which can be mentioned as one of the examples of this type of violence against the wife.

Article 1108 of the Civil Code states that "If a woman refuses to perform marital duties without a legal obstacle, she will not be entitled to alimony" (39). The question here is whether a woman, in order not to be deprived of alimony, can comply with any request that the husband asks her. Here law says that a woman is obliged to obey except for religious excuses. Sometimes, in the absence of these excuses, the wife may not be able to have a marital relationship with her husband at his request. What is the duty of a woman in such cases, should they continue this kind of violent relationship or go to the court (47)?

Women also often prefer to remain in violent relationships with their husbands due to

financial dependencies, social problems after divorce, maternal compassion, and custody of their children. Thus, even though governments try not to enter the realm of the family, to deal with the phenomenon of domestic violence, especially sexual violence against the wife, which is also a hidden violence, they have been forced to act and formulate appropriate laws.

Another example of sexual violence is the Nushuz male. Nushuz male does not have a clear status in the family law of the Islamic Republic in Iran; the word Nushuz male is not mentioned in any legal text. However, suspending the wife and refusing to divorce her on one hand and "not associating with the famous" on the other hand, in addition to personal harm to the wife, has negative social consequences that can lead to crimes such as sexual betrayal, assault, murder, and suicide.

As a result, since women's sexual rights are not recognized in Iranian culture and law, women who face this problem in cohabitation should prove their "Osr-o-Haraj" to the judge, therefore, many of them refuse to take legal action. In terms of women's sexual rights, it is necessary provide the necessary support to women in this regard by considering the sexual rights of women and designing, explaining, and criminalizing Nushuz of the husband (48).

It should be noted that premature ejaculation in men is unfortunately very common. Premature ejaculation in most cases, especially in severe cases, prevents sexual intercourse.

However, premature ejaculation is treatable, and the man can cure the disease, also, being undersexed makes some difficulties for some women. Moreover, if the man does not treat the disease for any reason and the woman suffers due to lack of sexual intercourse, she can go to court and file for divorce by proving the problem.

Finally, sexual rights are among the legitimate rights of couples for which the Islamic jurisprudence has stated significant measures to observe it and maintain the boundaries of couples and their maximum and desirable enjoyment.

In case of non-observance of these rights, by legislating criminal sentences and moral recommendations, it has provided the guarantee of observance of the rights of each spouse.

Although husband Nushuz is one of the significant cases that Shiite jurisprudence has dealt with, it is not reflected in the law of the Islamic Republic of Iran and the Family Protection Law.

Thus, the law's lack of attention to women's sexual rights, on the one hand, has led to the maximization of men's sexual rights, and on the other hand, has led to the neglect or minimization of women's sexual rights in culture (48).

One of the strengths and limitations of this study is that considering that the majority of articles deal with the types of sexual violence, the prevalence of sexual violence and its complications in women and children, it can be said that the study of legal protections for sexual violence is one of the strengths of this review, because clarifying and addressing the legal challenges of couples involved in sexual violence in Iran can help to find a future solution.

Another strength of this study was compiling an educational and consulting guide by the country's legal system. One of the limitations of the present study is the existence of few studies in this field. In cases of silence of the law, it is suggested that based on jurisprudential laws, legislators take steps to formulate legal solutions.

In the case of violence against women, the main issue is the consequences. People who are abused carry a heavy burden because of this traumatic event. Studies showed a significant relationship between physical, psychological and sexual violence with the symptoms of post-traumatic stress disorder (PTSD). Overall, violence against women seems to be an important health challenge that provides social protection for women against spousal violence, such as creating safe and appropriate places for victims, enacting and enforcing laws to protect women, and investigating the causes and factors underlying violence. Informing women about their legal rights in the family and community, and establishing and strengthening counseling centers can be effective in reducing the rate of domestic violence.

## Conclusion

It can be concluded that although in many types of violence, according to verses and hadiths, legitimacy and illegitimacy can be

extracted and jurisprudential rule can be explained; however, in many cases of unauthorized violence, appropriate restraining laws are proposed neither by jurisprudential scholars nor by lawyers and legislators. These include the cases of sexual violence in which only a limited number of cases have legal provisions in the section on penalties and in the Islamic Penal Code. Therefore, more attention to these cases by respected jurists and legislators can reduce many sexual violence against women. Of course, if these behaviors lead to physical harm to the wife, under the title of retribution, blood money, and ta'zir, or even in the case of Efza, it will always be Haram for the husband.

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## Conflicts of interest

Authors declared no conflicts of interest.

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